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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 LENHOFF ENTERPRISES, INC., a  
California corporation dba LENHOFF  
17 & LENHOFF,

18 Plaintiff,

19 v.

20 UNITED TALENT AGENCY, INC., a  
California corporation;  
21 INTERNATIONAL CREATIVE  
MANAGEMENT PARTNERS LLC, a  
22 Delaware limited liability company;  
and DOES 1 through 5, inclusive,

23 Defendants.  
24

Case No. 2:15-CV-01086-BRO (FFMx)

**DEFENDANT INTERNATIONAL  
CREATIVE MANAGEMENT  
PARTNERS LLC'S REPLY IN  
SUPPORT OF MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT;**

[[Fed. R. Civ. P. 12\(b\)\(6\)](#)]

Date: September 21, 2015  
Time: 1:30 p.m.  
Place: Courtroom 14  
Judge: Hon. Beverly Reid  
O'Connell

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## INTRODUCTION

Plaintiff's Opposition, replete with invitations for the Court to permit it to amend its amended complaint yet again, all but concedes that the First Amended Complaint ("FAC") is insufficient, and, as Plaintiff's first two attempts and its Opposition establish, no amount of additional pleading will alter the reality that Plaintiff cannot state a cognizable claim. At its core, Plaintiff's complaint is that two of its clients departed its agency and sought representation from two of its competitors—Defendants UTA and ICM Partners—because, as larger agencies, Defendants were able to offer the artists more and better opportunities. At no point does Plaintiff dispute that television packages have, for decades, been approved as valid practices by the various guilds whose job it is (not Plaintiff's) to speak on behalf of its members on this issue. In fact, Plaintiff's only regret seems to be that it does not have more packaged television shows in its arsenal. Rather than admit its own failings, Plaintiff tries to blame UTA and ICM Partners (and other large competitors of theirs) for being more successful businesses, and attempts to concoct an unfounded antitrust conspiracy for which it can seek relief with the Court's intervention.

So it is not surprising that the Opposition confirms that Plaintiff's conspiracy theory has no basis in fact or law. Plaintiff is reduced to arguing that it lost two clients in 2014 because Defendants supposedly conspired *fourteen years earlier* in 2000 to force the termination of SAG Rule 16(g) and, ignoring the obvious and implausible chasms between the causal links in Plaintiff's theory, to monopolize packages for television shows, even though that practice had been in existence for more than 40 years before the alleged conspiracy took place. Setting aside all of the legal inadequacies, Plaintiff's conspiracy theory is undermined by its own allegations that after Rule 16(g) expired, it was the SAG membership, not the talent agencies, that rejected the tentative deal reached between SAG's leadership and the Board of the Association of Talent Agencies. Moreover, Plaintiff cannot escape the

1 indisputable fact that there is nothing preventing Plaintiff or any other talent agency  
2 from signing clients to exclusive, term (rather than at-will) agency agreements  
3 and/or procuring employment for its clients in television shows packaged by other  
4 agencies. Nor does Plaintiff allege he has been prevented from doing so.

5 It is evident from Plaintiff's own allegations that each of the Defendants acts  
6 solely in its own individual economic self-interest, and that ICM Partners has done  
7 nothing remotely wrong, let alone conspired with anyone to drive Plaintiff out of  
8 business. What Plaintiff is really griping about is its own recognition of the  
9 increased levels of innovation, investment, and skill that it requires to remain  
10 relevant and compete as a modern talent agency. The representation of television  
11 artists is, more than ever, intensely and increasingly competitive, and, as Plaintiff  
12 concedes, pits dozens of rival firms, large and small, against one another in  
13 vigorous and continuous battles to attract and retain clients. In a free market  
14 economy, there will, by necessity and design, always be winners and losers, but it is  
15 rarely the case that when a business loses a client or two, it can hold its competitors  
16 liable for antitrust violations and thereby recover treble damages and attorneys'  
17 fees. This lawsuit is a paradigm example of the rule, not the exception.

18 Plaintiff acknowledges the deficiencies in its claims by urging the Court to  
19 permit it to amend its pleading. When confronted with the argument that its  
20 allegations of conspiracy lack the requisite specificity, Plaintiff responds that it  
21 "can and will allege" (Dkt No. 25 at 4 [["Opp."](#)]) where the defendants "discussed"  
22 certain topics ([Opp.](#) at 4), but does not suggest that it could plead facts to show that  
23 it is plausible to infer that Defendants agreed to form and carry out an antitrust  
24 conspiracy. Similarly, when faced with its failure to allege injury to competition,  
25 Plaintiff suggests it "can and will allege" that based on a speculative and attenuated  
26 chain of events, "[b]oth quality and choice" of the representation available to  
27 artists, and perhaps televisions viewers too, is somehow "constrained" ([Opp.](#) at 6,  
28 15). But even if there were some plausible nexus between the alleged agreement

1 and its purported effects, the FAC still fails to state an antitrust claim. Reduced  
 2 consumer quality or choice does not sufficiently plead an injury to competition as a  
 3 matter of law, which alone requires dismissal of Plaintiff's Sherman Act claim,  
 4 although it is also defective for other, independent reasons.

5 Plaintiff's opposition also demonstrates that the problems with its state law  
 6 claims are similarly incurable. Recognizing that its claims for tortious interference  
 7 are deficient as pled, Plaintiff offers to allege "further details about its oral  
 8 agreements with Clients #1 and #2," but does not suggest what those details might  
 9 be, or, more importantly, how they possibly could resuscitate Plaintiff's tortious  
 10 interference claims. Finally, Plaintiff fails to refute the legal authorities cited by  
 11 ICM Partners that require dismissal of Plaintiff's UCL claim because of the failure  
 12 to allege that ICM Partners engaged in actionable anticompetitive conduct, as well  
 13 as other cases which hold that Plaintiff's claims for declaratory and injunctive relief  
 14 are not cognizable because each is a form of relief, and neither is a separate cause  
 15 of action.

16 In short, further amendment would be futile and a waste of the resources of  
 17 the parties and the Court. This action should be dismissed with prejudice.

## 18 ARGUMENT

### 19 I. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM FOR 20 CONSPIRACY TO MONOPOLIZE IN VIOLATION OF SECTION 2

#### 21 A. Plaintiff's Opposition Fails To Overcome ICM Partners' Showing 22 That Plaintiff Cannot Plead Antitrust Injury

23 Plaintiff concedes that it "must allege both that [Defendants'] behavior is  
 24 anticompetitive and that plaintiff has been injured by an 'anti-competitive aspect of  
 25 the practice under scrutiny.'" *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192,  
 26 1200 (9th Cir. 2012) (citation omitted); see also *Opp.* at 15 (quoting *Brantley*).  
 27 Plaintiff fails to distinguish any of the cases relied upon by ICM Partners, nor does  
 28 Plaintiff disagree that the ability to offer lower commissions is a mark of more  
 vigorous competition, not less. See Dkt No. 21, at 8-9 ("[Mot.](#)"). Rather, Plaintiff

1 contends it suffered injury when “two premium, packageable clients were poached  
 2 by [Defendants]” and that this alleged injury “flows from an anticompetitive aspect  
 3 of” Defendants’ alleged conduct, namely, “the illusory price offered by members of  
 4 the cartel (UTA and ICM), and is an aspect of the diminished choice in meaningful  
 5 representation confronted by talent working in TV.” *Opp.* at 15 (emphasis in  
 6 original). Notably, the FAC does not describe Defendants supposed “illusory”  
 7 pricing, or what its purported market effects might be, although presumably  
 8 Plaintiff may try to allege that prices are increasing. *See Opp.* at 5-6.

9 But those allegations would be to no avail. As the Ninth Circuit has  
 10 explained, even if an “agreement has the effect of reducing consumers’ choices or  
 11 increasing prices,” that “does not sufficiently allege an injury to competition”  
 12 because each is “fully consistent with a free, competitive market.” *Brantley*, 675  
 13 F.3d at 1202. Here, Plaintiff does not plead that the alleged conspiracy caused  
 14 agencies to exit the market, or otherwise reduced competition, which then caused  
 15 television artists to face “diminished choice” for representation. To the contrary,  
 16 Plaintiff alleges the opposite—that artists have many choices and are exercising  
 17 their options by leaving one agency to join another. Indeed, Plaintiff’s sole  
 18 complaint is that Defendants’ alleged practice of offering clients lower  
 19 commissions is restricting its own ability to retain clients (FAC ¶¶ 26-27, 91),  
 20 which confirms that Plaintiff is complaining about injury to a competitor, not  
 21 competition.

22 **B. Plaintiff’s Opposition Fails To Overcome ICM Partners’ Showing**  
 23 **That A “Shared Monopoly” Theory Is Not Cognizable**

24 Plaintiff concedes that allowing a cause of action to proceed on a theory of a  
 25 “shared” or “joint” monopoly would be unprecedented in this Circuit. *Opp.* at 9.  
 26 Plaintiff likewise acknowledges the Ninth Circuit’s pronouncement, in *Rebel Oil*  
 27 *Co. v. Atlantic Richfield Co.*, that “one firm *alone* must have the power to control  
 28 market output and exclude competition” for a Section 2 violation to exist. 51 F.3d

1 1421, 1442-43 (9th Cir.) (emphasis in original). Nevertheless, Plaintiff argues that  
 2 *Rebel Oil* is distinguishable on the grounds that it involved an attempt to  
 3 monopolize claim, rather than conspiracy to monopolize under Section 2. *Opp.* at  
 4 9. But this is a distinction without a difference. Plaintiff fails to explain why  
 5 conspiracy to monopolize claims should be treated differently, and no justification  
 6 exists.

7 Indeed, “the history of the Sherman Act reveals that Congress’ concept of  
 8 ‘monopoly’ did not include ‘shared monopolies’ or ‘oligopolies’ at all, but rather  
 9 the complete domination of a market by a single economic entity.” *Sun Dun, Inc.*  
 10 *of Washington v. Coca-Cola Co.*, 740 F. Supp. 381, 391 (D. Md. 1990). Although  
 11 it is theoretically possible for a group of firms to conspire to monopolize “if the aim  
 12 of the conspiracy is to form a single entity to possess the illegal market power,”  
 13 Plaintiff has failed to plead, or even offer to plead, those facts. *Id.* at 391-92.  
 14 Moreover, Plaintiff entirely ignores authorities cited in the Motion in which other  
 15 courts in this Circuit have relied on *Rebel Oil*’s reasoning to dismiss conspiracy to  
 16 monopolize claims premised on a “shared” or “joint” monopoly theory. *See Mot.* at  
 17 10-11. Plaintiff presents no reason for the Court to part ways with the “vast  
 18 majority of other courts” that have sided against a “shared” or “joint” monopoly  
 19 theory. *Oxbow Carbon & Minerals LLC v. Union Pac. R.R. Co.*, 926 F. Supp. 2d  
 20 36, 45-46 (D.D.C. 2013); *see also Mot.* at Section I.B. (citing authorities). And the  
 21 Court should decline to do so.

22 Plaintiff’s out-of-circuit case authorities are unavailing because each is  
 23 entirely distinguishable. For instance, in *United States v. American Airlines, Inc.*  
 24 one of two controlling players in a duopoly unequivocally offered to fix prices with  
 25 the other, in which case the conspiracy would have resulted in the only two firms in  
 26 the market effectively acting as a single entity. 743 F.2d 1114 (5th Cir. 1984). As  
 27 another court pointed out, “[s]uch a price-fixing agreement would have resulted in  
 28 the equivalent of a single-firm price-setting, which is the essence of

monopolization.” *Int’l Longshore & Warehouse Union v. ICTSI Or., Inc.*, 15 F. Supp. 3d 1075, 1096 n.9 (D. Or. 2014) (declining to follow *American Airlines*). Here, there are no allegations of market allocation or price-fixing, and Plaintiff concedes there are dozens of other competitors. Thus, there is no similar risk of *de facto* single-firm price setting.

Similarly, *In re Credit Default Swaps Antitrust Litigation*, 2014 WL 4379112 (S.D.N.Y. Sept. 4, 2014), fails to support Plaintiff’s theory. There, the court was skeptical of the shared monopoly concept but noted a previous opinion raising the possibility of such a theory in the conspiracy to monopolize context where “the aim of the conspiracy is to form a single entity to possess the illegal market power, or where two or more competitors seek to allocate a market and exclude competitors, even if they do not form a single corporate entity.” *Id.* at 14 (quoting *Arista Records LLC v. Lime Grp. LLC*, 532 F. Supp. 2d 556, 580 (S.D.N.Y. 2007)). Once again, Plaintiff does not and cannot allege those facts.

In any event, even if the Court were willing to break new ground for antitrust jurisprudence, Plaintiff’s claim must still be dismissed for failure to plead any facts demonstrating that Defendants actually conspired to monopolize.

**C. Plaintiff’s Opposition Fails To Overcome ICM Partners’ Showing That Plaintiff Has Not Pled An Antitrust Conspiracy**

Plaintiff does not even attempt to distinguish the case law cited in the Motion, or to deny that for its antitrust conspiracy claim to survive, Plaintiff must allege specific facts describing the circumstances of the alleged agreement. *See Mot.* at 12-13. Instead, Plaintiff contends that allegations of “parallel conduct placed in a ‘context’ (commonly referred to as ‘plus factors’)” is sufficient, alone, to allege formation of a conspiracy. *Opp.* at. 13 (quoting and discussing *Oxbow*).

Plaintiff is incorrect as a matter of law, *see, e.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 546, 127 S.Ct. 1955, 167 L. Ed. 2d 929 (2007), and Plaintiff’s cited authority actually holds the opposite. In *Oxbow*, the court granted a motion to

1 dismiss because it found the allegations that “plus factors,” which included “a  
2 parallel sudden shift in defendants’ conduct in the context of an industry structure  
3 conducive to collusion and alongside an alleged conspiracy regarding pricing” were  
4 insufficient to state a Sherman Act claim. 926 F. Supp. 2d at 47. The court held  
5 that such facts, alone, could not support an antitrust conspiracy claim in the absence  
6 of factual allegations detailing “basic factual information” about the alleged  
7 conspiracy such as “how the alleged agreement came about, the basic terms of the  
8 agreement itself, or how the defendants used the agreement to monopolize the rail  
9 freight market.” *Id.*

10 Here, as in *Oxbow*, Plaintiff was required, and has failed, to state even the  
11 most basic facts of the conspiracy, including when and how it came about or the  
12 basic terms of the alleged agreement. Nor would Plaintiff’s new, proffered  
13 allegations about events purportedly occurring in 2015, over a decade later, help to  
14 demonstrate those basic facts. See *Opp.* at 13. Thus, amendment would be futile,  
15 and Plaintiff’s Section 2 claim should be dismissed with prejudice.

16 Plaintiff entirely ignores the arguments and authority in the Motion that  
17 demonstrate Plaintiff’s failure to allege any facts to support an overt act in  
18 furtherance of the alleged conspiracy. See *Mot.* at 15-16. Plaintiff therefore  
19 concedes that deficiency in its pleading. *Jenkins v. Cty. of Riverside*, 398 F.3d  
20 1093, 1095 n.4 (9th Cir. 2005) (plaintiff waived challenge to claims by failing to  
21 raise them in opposition to motion challenging them). Likewise, Plaintiff does not  
22 meaningfully address ICM Partners’ authority demonstrating that the FAC fails to  
23 plead any non-conclusory facts demonstrating specific intent to monopolize. See  
24 *Mot.* at 16-17. To the contrary, Plaintiff concedes that the sole allegations in the  
25 FAC directed at this element are the conclusory statements that “the intent of  
26 Defendants . . . was to destroy competition and build a monopoly of [Agencies].”  
27 See *Opp.* at 2. But these conclusory allegations are patently insufficient to establish  
28 specific intent, as discussed in detail in the Motion.

1 **II. THE COURT SHOULD DENY LEAVE TO AMEND THE AMENDED**  
 2 **COMPLAINT TO ADD A CLAIM UNDER SECTION 1 OF THE**  
 3 **SHERMAN ACT BECAUSE AMENDMENT WOULD BE FUTILE**

4 Implicitly acknowledging the many flaws in its Section 2 claim, Plaintiff  
 5 seeks leave to add a claim for “collusion between ‘oligopolists’” under Section 1 of  
 6 the Sherman Act. *Opp.* at 14. But even if permitted by the Court, such an  
 7 amendment would be futile because the allegations that Plaintiff proposed to add  
 8 do not state a plausible Section 1 violation as a matter of law. *See Carrico v. City*  
 9 *of S.F.*, 656 F.3d 1002, 1008 (9th Cir. 2011) (complaint may be dismissed without  
 10 leave to amend “if amendment would be futile”).

11 First, as with Section 2 conspiracy to monopolize claims, to state a claim  
 12 under Section 1 of the Sherman Act, a plaintiff must “allege an agreement between  
 13 antitrust co-conspirators,” and to do so, “the complaint must allege facts such as a  
 14 ‘specific time, place, or person involved in the alleged conspiracies’ to give a  
 15 defendant seeking to respond to allegations of a conspiracy an idea of where to  
 16 begin.” *Kendall v. U.S.A., Inc.*, 518 F.3d 1042, 1047 (9th Cir. 2008) (quoting  
 17 *Twombly*, 550 U.S. at 565 n.10). Mere parallel conduct does not suffice. *Twombly*,  
 18 550 U.S. at 546. Plaintiff seems to suggest that it could plead a claim under Section  
 19 1 based on allegations in the FAC that Defendants and their alleged co-conspirators  
 20 “engage in ‘exclusive co-packaging contracts” and that they “have a policy of not  
 21 splitting packaging fees with [other agencies] and have formed, in essence, a  
 22 ‘cartel’ that controls the market.” *Opp.* at 3. Plaintiff further suggests that it could  
 23 add allegations demonstrating that Defendants and their alleged co-conspirators  
 24 “would not co-package with Plaintiff (and other non-core agencies), as well as  
 25 refusals to deal from buyers . . . .” *Opp.* at 4.

26 However, Plaintiff’s allegations (and proposed allegations) to establish some  
 27 sort of horizontal agreement fail once again to offer any facts that describe the very  
 28 basic circumstances of any alleged agreement between Defendants and their alleged  
 co-conspirators, such as when and where the agreement was formed, or even that an

1 agreement was formed in the first place. Indeed, assuming *arguendo* that  
 2 Defendants and their alleged co-conspirators each, independently, “have a *policy* of  
 3 not splitting packaging fees” with agencies like Plaintiff, that does not necessitate  
 4 that they conspired to adopt those policies, and, at best, establishes only that each  
 5 independently engaged in parallel conduct, which is insufficient to state a claim, as  
 6 discussed above.

7 In the same vein, Plaintiff hints at some type of vertical conspiracy, in which  
 8 Defendants and their alleged co-conspirators “coerce Studio employers to buy their  
 9 packages and to employ their talent.” FAC ¶ 99; *Opp.* at 3. But this claim, too,  
 10 suffers from the defect that Plaintiff has not alleged, nor does it offer to allege, any  
 11 facts establishing an affirmative agreement to exclude Plaintiff or any other agency.  
 12 The mere fact that a manufacturer, for example, may be able to exert economic  
 13 pressure on a customer is not sufficient evidence of an agreement in restraint of  
 14 trade under Section 1. *See, e.g., Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S.  
 15 752, 761; 104 S. Ct. 1464; 79 L. Ed. 2d 775 (1984) (“A distributor is free to  
 16 acquiesce in the manufacturer’s demand in order to avoid termination.”); *The*  
 17 *Jeanery, Inc. v. James Jeans, Inc.*, 849 F.2d 1148, 1158-59 (9th Cir. 1988)  
 18 (“exposition, persuasion, argument, or pressure” insufficient to establish coercion  
 19 (citation omitted)); *Yentsch v. Texaco, Inc.*, 630 F.2d 46, 53 (2d Cir.1980) (same);  
 20 *cf. G.H.I.I. v. MTS, Inc.*, 147 Cal. App. 3d 256, 269; 195 Cal. Rptr. 211 (1983)  
 21 (allegations of “economic leverage” to “coerce” more favorable terms from vertical  
 22 distributors insufficient to establish unlawful conspiracy under California’s  
 23 Cartwright Act).

24 Finally, even if Plaintiff somehow could plead sufficient facts to show that  
 25 ICM Partners entered into a purported agreement that might violate Section 1,  
 26 Plaintiff has not indicated how such conduct could conceivably have caused  
 27 Plaintiff’s purported injury, namely, the loss of Client #2. *See, e.g., Arista Records*,  
 28 532 F. Supp. 2d at 574 (allegations that counter-defendants “conspired ‘to coerce

1 actual and potential advertisers, vendors, and customers’ to stop doing business  
 2 with [counterclaimant]” insufficient because “[e]ven assuming arguendo that such  
 3 harm would be sufficient to confer antitrust standing on [counterclaimant], the FAC  
 4 does not specifically articulate any of the links in this causal chain”). So, too, here.  
 5 Neither the FAC nor the Opposition suggest any link between Plaintiff’s claimed  
 6 injury from its loss of Client #2 and the purported “horizontal agreements.” *See*  
 7 [Opp.](#) at 14.

8 Thus, because the newly proffered allegations do not provide the necessary  
 9 details to plead a plausible conspiracy or a violation of Section 1, and do not reveal  
 10 a plausible link to Plaintiff’s alleged injury, amendment would be futile.

### 11 **III. PLAINTIFF’S OPPOSITION FAILS TO OVERCOME ICM** 12 **PARTNERS’ SHOWING THAT THE AMENDED COMPLAINT** 13 **LACKS FACTS SUFFICIENT TO PLEAD A UCL CLAIM**

14 Plaintiff fails meaningfully to address any of the arguments or authorities  
 15 cited in the Motion that demonstrate that Plaintiff has failed to state a valid claim  
 16 under either prong of California’s UCL. *See* [Mot.](#) at 17-20. Ignoring the  
 17 “unlawful” prong entirely, Plaintiff refers to ICM Partners’ co-Defendant’s brief  
 18 and argues that to state a UCL “unfair” prong claim, Plaintiff need only  
 19 demonstrate an “incipient” violation of the antitrust laws. [Opp.](#) at 17. But  
 20 Plaintiff’s single citation in support of this claim arises in the context of a claim by  
 21 a consumer, not a competitor, and merely sets forth the *Cel-Tech* standard. *See*  
 22 *generally Durrell v. Sharp Healthcare*, 183 Cal. App. 4th 1350; 108 Cal. Rptr. 3d  
 23 [682 \(2010\)](#). *Durrell* does nothing to address the proposition, or the authority cited  
 24 by ICM Partners’ in support of it, that Plaintiff’s UCL “unfair” prong claim must  
 25 fall with its Sherman Act claims, because Plaintiff failed to plead the requisite  
 26 elements for conspiracy and failed to allege any anticompetitive conduct or harm to  
 27 competition or consumers. *See* [Mot.](#) at 18-20 (citing cases). Plaintiff therefore  
 28 waives any argument otherwise, and its claim should be dismissed. *See* [Jenkins](#),  
[398 F.3d at 1095 n.4](#).

**IV. PLAINTIFF’S OPPOSITION FAILS TO OVERCOME ICM PARTNERS’ SHOWING THAT THE FAC DOES NOT STATE A CLAIM FOR INTERFERENCE WITH CONTRACT**

Plaintiff does not meaningfully address any of the arguments or case law cited in the Motion that demonstrate that Plaintiff failed to plead facts sufficient to allege breach of an existing contract, ICM Partners’ knowledge, or wrongful conduct sufficient to support its interference with contract claim.<sup>1</sup> Plaintiff merely recites the pleading standard and contends that it has sufficiently alleged “existence of a contract.” *Opp.* at 16. Plaintiff’s Opposition misses the point. As explained in detail in the Motion, Plaintiff must plead facts sufficient to show the existence of a valid contract *and breach* of that contract. *CRST Van Expedited, Inc. v. Werner Enters., Inc.*, 479 F.3d 1099, 1105 (2007). Despite its belated offer to plead “further details” (*Opp.* at 17) of the alleged agreement with Client #2, Plaintiff failed to plead the terms of that contract despite having all of the necessary facts, by definition, within its control when it filed its complaint and amended complaint.

Similarly, in support of its allegations of breach, Plaintiff has alleged only the conclusory allegation that “Defendants actually induced the breach of [Plaintiff’s] clients.” *FAC* ¶¶ 130-31. Plaintiff has failed to support these allegations with any facts revealing a single term of the contract that Client #2 allegedly breached. Indeed, the mere fact that Client #2 “terminat[ed]” a contract with Plaintiff does not mean that Client #2 breached that contract. *FAC* ¶ 26. None of the cases Plaintiff cites stands for the proposition that Plaintiff is relieved from alleging facts supporting breach of an existing contract in order to plead interference with contract. Thus, Plaintiff’s claim for interference with contract should be dismissed.

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<sup>1</sup> Plaintiff does not address the argument that it failed to allege ICM Partners’ knowledge or wrongful conduct, and fails to oppose the Motion with respect to its alleged claim for Interference with Prospective Economic Advantage. *See Mot.* at Sections IV.B & IV.C; *Opp.* at 16-17. Plaintiff’s non-opposition requires dismissal. *Jenkins*, 398 F.3d at 1095 n.4.

**V. PLAINTIFF’S OPPOSITION FAILS TO OVERCOME ICM PARTNERS’ SHOWING THAT THE FAC FAILS TO STATE A CLAIM FOR DECLARATORY OR INJUNCTIVE RELIEF**

Plaintiff does not dispute that its declaratory relief claim is duplicative of its Sherman Act and state law claims. *Opp.* at 17. Instead, Plaintiff cites a single case and, without explanation, suggests that the declaratory relief claim is proper. *Id.*

Plaintiff’s authority is inapposite. In *Newcal Industries, Inc. v. Ikon Office Solution*, the plaintiff alleged a separate claim seeking a declaration “that all [underlying] contracts were void and unenforceable,” rather than a declaration that the defendant had violated a statute that formed the basis for another claim for relief in its pleading. *513 F.3d 1038, 1056 (9th Cir. 2008)*. Thus, the *Newcal* court never addressed the question presented here, *i.e.*, whether the claim for declaratory relief should be dismissed as duplicative. Here, by contrast, Plaintiff does not deny that its declaratory relief claim “merely replicate[s]” other causes of action; thus, Plaintiff’s declaratory relief claim should be dismissed with prejudice. *E.g., Del Monte Int’l GmbH v. Del Monte Corp.*, *995 F. Supp. 2d 1107, 1124 (C.D. Cal. 2014)*. Similarly, Plaintiff’s claim for injunctive relief should be dismissed because Plaintiff fails to address any of the arguments or authorities cited in Motion that hold that there is no separate cause of action for injunctive relief. *See Mot.* at 25.

**CONCLUSION**

For the foregoing reasons and for those stated in the Motion, ICM Partners respectfully requests that the Court dismiss the entire FAC with prejudice.

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